

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MICHAEL H. PHAM,
Plaintiff,

v.

RAYMOND JONES,
Defendant.

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Civil Action H-05-2027

ORDER

At a duly noticed show cause hearing on October 12, 2005, this court granted plaintiff Michael Pham's motion to compel (Dkt. 18) defendant to provide full and complete responses to requests for production. As noted on the record, defendant failed to respond to plaintiff's counsel's inquiries regarding the adequacy of his discovery responses and failed to respond timely to the motion to compel. After the hearing, in which defendant participated,¹ the court took under advisement plaintiff's motion for sanctions pursuant to Federal Rule of Civil Procedure 37. In accordance with the court's minute order (Dkt. 24), plaintiff's counsel subsequently filed a declaration (Dkt. 25) supporting an award of attorney fees. Defendant has not objected to the declaration.

Rule 37(4)(A) provides that if a motion to compel is granted, the court may require the party whose conduct necessitated the motion to pay the reasonable expenses, including attorney's fees, incurred in making the motion. To calculate the amount of an award of attorney's fees under Rule 37, the court must determine both the reasonable amount of time

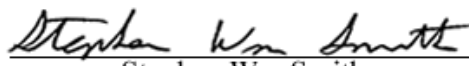
¹ Defendant, a lawyer appearing *pro se* in this matter, arrived approximately 20 minutes late for the hearing. See October 12, 2005 minute order (Dkt. 24).

expended and the corresponding reasonable hourly rate. *Tollett v. City of Kemah*, 285 F.3d 357, 367 (5th Cir. 2002).

Plaintiff's counsel seeks \$1,693.75. This amount is comprised of 2.75 hours at the rate of \$225.00 for co-counsel who is an intellectual property specialist, and 4.3 hours at the rate of \$250.00 for lead counsel. Counsel's rate of \$250.00 is reasonable in this jurisdiction for experienced counsel. However, the issues raised by the motion to compel were straight forward. Defendant did not produce any documents, so review of documents to determine whether the responses were complete was not required. In addition, defendant did not raise any defenses that required attention because he did not respond to the motion or the show cause order until just before the hearing. The hearing was delayed by defendant's tardiness, but was completed in well under an hour. The circumstances of this case and the interests of justice require a fee award less than that requested. Two hours at the rate of \$250.00 per hour will adequately compensate plaintiff for the motion to compel and will sanction defendant, an individual representing himself, sufficiently to deter future similar conduct. It is therefore

ORDERED that defendant shall pay plaintiff \$500.00 for reasonable attorney's fees incurred as a result of the motion to compel.

Signed at Houston, Texas on October 27, 2005.


Stephen Wm Smith
United States Magistrate Judge